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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/689,971	10/20/2003	Tyler Bielman	236528002US2	4435
25096	7590	10/28/2005	EXAMINER	
PERKINS COIE LLP			MENDIRATTA, VISHU K	
PATENT-SEA			ART UNIT	
P.O. BOX 1247			PAPER NUMBER	
SEATTLE, WA 98111-1247			3711	

.DATE MAILED: 10/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/689,971

Applicant(s)

BIELMAN, TYLER

Examiner

Vishu K. Mendiratta

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 4-8, 15-17 and 21-41 is/are pending in the application.
- 4a) Of the above claim(s) 4-8, 21- 41 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 4-7,21-40, drawn to game, classified in class 273, subclass 276.
  - II. Claim 41, drawn to game kit for sale, classified in class 273, subclass 236.
  - III. Claims 15-17, drawn to method of playing, classified in class 273, subclass 243.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I,II and III are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions Game, Kit and Method of playing.
3. During a telephone conversation with Christopher J Daley Watson on 10/20/05 a provisional election was made without traverse to prosecute the invention of Method of playing, claims 15-17. Affirmation of this election must be made by applicant in replying to this Office action. Claims 4-7,21-37,41 withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. Claims 15-16 rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Mackey (6857633) in view of Briant (55802094).

Claim 15: Mackey teaches assembling a toy base (9:31-32) from multiple base components (10,10',Fig.2) as planar pieces (4:11-12) and removably securing at least one accessory (top pieces, reference 12), player taking turns to play (7:50-51), generating random number and plating according to rules (8:30-35), upon a negative event removing an accessory (9:46- 51).

Applicant may argue that Mackey does not expressly use planar components for making the toy base as shown in Fig.2

Mackey clearly indicates at possibility of using planar configuration. Mackey however uses planar component to make a structure unit for aesthetic reasons.

Briant teaches making a toy castle with planar components (Fig.1).

In order to simplify the game, it would have been obvious to use the planar component

One of ordinary skill in art at the time the invention was made would have suggested using planar material to simplify the game playing.

Claim 16: Mackey also teaches making an alternative base (tower) using same components.

6. Claim 17 rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Mackey (6857633) in further view of Briant (55802094) and Johanningmeier (2945696).

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Mackey and Briant teaches all limitations except that they do not teach a random device made from planar components.

Johanningmeier teaches a spinner made from planar components (Fig.1-5).

It is well known that planar materials require less storing space. In order to package the game in a small space, it would have been obvious to use planar components.

One of ordinary skill in art at the time the invention was made would have suggested using planar components to make a random device.

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Abeshouse teaches planar spinner. Goldfarb teaches assembling and disassembling. Partridge teaches assembling and disassembling. Losey teaches components assembled and disassembled. Bodish teaches assembling and disassembling

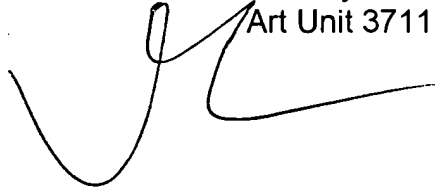
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vishu K. Mendiratta whose telephone number is (571) 272-4426. The examiner can normally be reached on Mon-Fri 8AM to 5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eugene Kim can be reached on (571) 272-4463. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Vishu K Mendiratta  
Primary Examiner  
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A handwritten signature in black ink, consisting of a large 'V' followed by a stylized 'K' and a horizontal line extending to the right.

VKM  
October 21, 2005